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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2011-496

13 **HOLLY RENEE MOORE**
aka HOLLY RENEE KELL
14 1031 Balboa St.
Morro Bay, CA 93442

FIRST AMENDED ACCUSATION

15 Registered Nurse License No. 585957
Public Health Nurse Advanced Certification
16 No. PHN 70186

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs (Board).

23 2. On or about August 21, 2001, the Board issued Registered Nurse License No. 585957
24 to Holly Renee Moore, aka Holly Renee Kell (Respondent). The Registered Nurse License was
25 in full force and effect at all times relevant to the charges brought herein and expired on April 30,
26 2011.

27 3. On or about May 12, 2006, the Board issued Public Health Nurse Advanced
28 Certification No. PHN 70186 to Respondent. The Public Health Nurse Advanced Certification

1 was in full force and effect at all times relevant to the charges brought herein and expired on
2 April 30, 2011.

3 **JURISDICTION**

4 4. This Accusation is brought before the Board under the authority of the following
5 laws. All section references are to the Business and Professions Code unless otherwise indicated.

6 **STATUTORY PROVISIONS**

7 5. Section 118, subdivision (b), provides that the suspension, expiration, surrender or
8 cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary
9 action during the period within which the license may be renewed, restored, reissued or
10 reinstated.

11 6. Section 490 provides, in pertinent part, that a board may suspend or revoke a license
12 on the ground that the licensee has been convicted of a crime substantially related to the
13 qualifications, functions, or duties of the business or profession for which the license was issued.

14 7. Section 2750 provides, in pertinent part, that the Board may discipline any licensee,
15 including a licensee holding a temporary or an inactive license, for any reason provided in Article
16 3 (commencing with section 2750) of the Nursing Practice Act.

17 8. Section 2764 provides, in pertinent part, that the expiration of a license shall not
18 deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or
19 to render a decision imposing discipline on the license. Under section 2811, subdivision (b), the
20 Board may renew an expired license at any time within eight (8) years after the expiration.

21 9. Section 2761 states, in pertinent part:

22 "The board may take disciplinary action against a certified or licensed nurse or deny an
23 application for a certificate or license for any of the following:

24 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

25

26 "(f) Conviction of a felony or of any offense substantially related to the qualifications,
27 functions, and duties of a registered nurse, in which event the record of the conviction shall be
28 conclusive evidence thereof. . . ."

10. Section 2762 states, in pertinent part:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

• • • •

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

"(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof. . . ."

REGULATORY PROVISION

11. California Code of Regulations, title 16, section 1444 states, in pertinent part:

“A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. . . .”

COST RECOVERY

12. Section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Convictions of Substantially Related Crimes)**

3 13. Respondent is subject to disciplinary action under sections 490 and 2761,
4 subdivision (f), in conjunction with California Code of Regulations, title 16, section 1444, in that
5 Respondent was convicted of crimes substantially related to the qualifications, functions or duties
6 of a registered nurse which to a substantial degree evidence her present or potential unfitness to
7 practice in a manner consistent with the public health, safety, or welfare, as follows:

8 a. On or about April 20, 2010, after pleading nolo contendere Respondent was convicted
9 of one misdemeanor count of violation Vehicle Code section 23152, subdivision (b) [driving
10 while having 0.08% and more, by weight of alcohol in her blood] in the criminal proceeding
11 entitled *The People of the State of California v. Holly Renee Moore* (Super. Ct. San Luis Obispo
12 County, 2010, No. M442977). The Court sentenced Respondent to ten (10) days in jail, placed
13 her on four (4) years probation, and ordered her to complete a 21-month 2nd Offender DWI
14 (Driving While Intoxicated) Program. The circumstances underlying the conviction are that on or
15 about January 15, 2010, Respondent drove her vehicle while having a blood-alcohol content level
16 of 0.16%.

17 The specific circumstances are as follows: on or about January 15, 2010, during a traffic
18 stop by the California Highway Patrol, Respondent appeared confused. While speaking to
19 Respondent, the officer detected a strong odor of alcohol emitting from her breath. She was
20 observed to have slurred speech and red, watery eyes. When the officer asked if she had any
21 alcohol to drink today, Respondent stated, "Just a couple glasses of wine." While at the scene,
22 Respondent submitted to a breath test that resulted in a blood-alcohol content level of 0.16% on
23 the first reading, 0.13% on the second reading, and 0.14% on the third reading.

24 b. On or about February 4, 2010, after pleading nolo contendere, Respondent was
25 convicted of violating Vehicle Code section 23152(b) [driving while having an equal to or more
26 than 0.08% blood alcohol] in the criminal proceeding entitled *The People of the State of*
27 *California v. Holly Renee Moore* (Super. Ct. San Luis Obispo County, 2007, No. M412186). The
28 Court sentenced Respondent to serve two (2) days in jail, placed her on three (3) years of

1 probation, and ordered her to complete a 3-month 1st Offender DWI Program. On or about
2 April 23, 2008, the Court sentenced Respondent to seven (7) days in jail for admittedly violating
3 probation. On or about October 25, 2010, Respondent was arrested for an outstanding
4 misdemeanor warrant with a bail of \$15,000.00, charging a violation of Vehicle Code § 2315 (b)
5 (driving while having an equal to or more than .08% blood alcohol) and Penal Code § 1203.2
6 (probation violation). Respondent was then booked and placed in County Jail. The court revoked
7 her probation on November 24, 2010 and sentenced her to ten days in jail. The circumstances
8 underlying the conviction are that on or about December 14, 2007, Respondent drove a vehicle
9 while having a blood-alcohol level of 0.16%.

10 c. On or about April 23, 2008, after pleading nolo contendere, Respondent was
11 convicted of one misdemeanor count of violating Vehicle Code section 14601.5(a) [driving with a
12 suspended drivers license] in the criminal proceeding entitled *The People of the State of*
13 *California v. Holly Renee Moore* (Super. Ct. San Luis Obispo County, 2008, No. M413909). The
14 Court ordered Respondent to pay fines and penalties. The circumstances underlying the
15 conviction are that on or about February 13, 2008, Respondent drove her vehicle when her license
16 was suspended.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Dangerous Use of Alcohol)**

19 14. Respondent is subject to disciplinary action under sections 2761, subdivision (a), and
20 2762, subdivision (b), in that Respondent used alcoholic beverages to an extent or in a manner
21 dangerous or injurious to herself or others. Complainant refers to and by this reference
22 incorporates the allegations set forth above in paragraph 13, inclusive, as though set forth fully.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Alcohol Related Convictions)**

25 15. Respondent is subject to disciplinary action under sections 2761, subdivision (a), and
26 2762, subdivision (c), in that Respondent was convicted of criminal offenses involving the
27 consumption or self-administration of alcohol. Complainant refers to and by this reference
28 incorporates the allegations set forth above in paragraphs 13-14, inclusive, as though set forth

1 fully.

2 **PRAYER**

3 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
4 and that following the hearing, the Board issue a decision:

5 1. Revoking or suspending Registered Nurse License No. 585957, issued to Holly
6 Renee Moore, aka Holly Renee Kell;

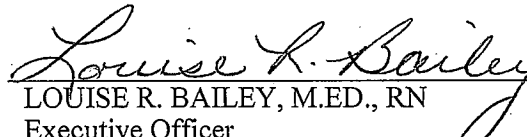
7 2. Revoking or suspending Public Health Nurse Advanced Certification No. PHN
8 70186, issued to Holly Renee Moore, aka Holly Renee Kell;

9 3. Ordering Holly Renee Moore to pay the Board the reasonable costs of the
10 investigation and enforcement of this case, pursuant to section 125.3; and,

11 4. Taking such other and further action as deemed necessary and proper.

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14 DATED: _____

6/8/11


LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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